

## § 71.72

judge, and stipulate that the matter will be adjudicated by the appropriate TTB officer based upon written submissions. Written submissions may include stipulations of law or facts, proposed findings of fact and conclusions of law, briefs, or any other documentary material. The pleadings together with the written submissions of both the attorneys for the Government and the respondent shall constitute the record on which the initial decision shall be based. The election to contest the citation without a hearing under this section does not affect the respondent's right to appeal.

[T.D. ATF-244, 51 FR 45763, Dec. 22, 1986, as amended by T.D. ATF-374, 61 FR 29957, June 13, 1996]

### SURRENDER OF PERMIT

#### § 71.72 Before citation.

If a respondent surrenders the permit before citation, the appropriate TTB officer may accept the surrender. But if the evidence, in the opinion of the appropriate TTB officer, warrants citation for suspension, revocation or annulment, the surrender shall be refused and the appropriate TTB officer shall issue the citation.

[T.D. ATF-244, 51 FR 45764, Dec. 22, 1986, as amended by T.D. ATF-374, 61 FR 29957, June 13, 1996]

#### § 71.73 After citation.

If a respondent surrenders the permit after citation and prior to an initial decision, the appropriate TTB officer may accept the surrender of the permit and dismiss the proceeding as moot. If, however, in the opinion of the appropriate TTB officer, the evidence is such as to warrant suspension, revocation or annulment, as the case may be, the surrender of the permit shall be refused, and the proceeding shall continue.

[T.D. ATF-244, 51 FR 45764, Dec. 22, 1986, as amended by T.D. ATF-374, 61 FR 29957, June 13, 1996]

### MOTIONS

#### § 71.74 General.

All motions shall be made and addressed to the officer before whom the proceeding is pending, and copies of all

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motion papers shall be served upon the other party or parties. Such officer may dispose of any motion without oral argument, but he may, if he so desires, set it down for hearing and request argument. He may dispose of such motion prior to the hearing on the merits or he may postpone the disposition until the hearing on the merits. No appeal may be taken from any ruling on a motion until the whole record is certified for review. Examples of typical motions may be found in the Rules of Civil Procedure referred to in § 71.2.

#### § 71.75 Prior to hearing.

All motions which should be made prior to the hearing, such as motion directed to the sufficiency of the pleadings or of preliminary orders, shall be filed in writing with the appropriate TTB officer issuing the citation or the administrative law judge if the matter has been referred to him, and shall briefly state the order or relief applied for and the grounds for such motion, and shall be filed within 15 days after service of the citation.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-374, 61 FR 29957, June 13, 1996]

#### § 71.76 At hearing.

Motions at the hearing may be made in writing to the administrative law judge or stated orally on the record.

### HEARING

#### § 71.77 General.

If a hearing is requested, it shall be held at the time and place stated in the notice of hearing unless otherwise ordered by the administrative law judge.

[T.D. ATF-244, 51 FR 45764, Dec. 22, 1986]

#### § 71.78 Applications.

The administrative law judge who presides at the hearing on applications shall recommend a decision to the appropriate TTB officer who shall make the initial decision as provided in § 71.107. The applicant may be directed by the appropriate TTB officer to produce such records as may be deemed necessary for examination. All hearings on applications shall be open to